

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

Re: Docket Nos. 3057

Objection Deadline: April 15, 2019 at 4:00 p.m. (ET)

**SUPPLEMENTAL OBJECTION OF REALTY INCOME
CORPORATION TO THE DEBTORS' NOTICE OF ASSUMPTION
AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

Realty Income Corporation (the "Realty Income"), hereby submits this supplemental objection (the "Supplemental Objection") to the Debtors' *Notice of Assumption and Assignment of Additional Designatable Leases* (the "Assumption Notice").² In support of this Supplemental Objection, Realty Income respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SHC Licensed Business LLC (3718); and SHC Promotions LLC (9626). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² Docket No. 3057.

BACKGROUND

1. Realty Income is the owner, affiliate, or managing agent of retail properties located throughout the United States. Realty Income holds a beneficial interest in a trust which owns property where the Debtors lease non-residential real estate pursuant to a written lease (the “Lease”) for the location listed on the attached **Exhibit A** (the “Leased Premises”). The Leased Premises are located in a shopping center as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

2. On October 15, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors remain in possession of their properties and continue to manage their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On January 23, 2019, the Debtors filed the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Global Sale Transaction* (the “Cure Notice”),³ which set forth the proposed cure amount for certain of the Debtors’ leases and contracts.

4. On January 28, 2019, Realty Income, by and through counsel, filed an objection to the Cure Notice (the “Cure Objection”).⁴ Realty Income repeats and incorporates by reference its objections contained in the Cure Objection.

³ Docket No. 1774.

⁴ Docket No. 2063.

5. On February 8, 2019, the Court entered an order approving the sale of substantially all of the Debtors' assets to the Buyer, and authorizing the assumption and assignment of certain executory contracts and leases in connection therewith.⁵

6. On April 5, 2019, the Debtors filed the Assumption Notice, which restates the Debtors' proposed cure amount for the Lease.

7. Additional cure costs have accrued under the Lease since the filing of the Cure Notice. Realty Income now asserts additional cure amounts that could not have been raised in its Cure Objection. As set forth below, the correct cure amount for the Lease is \$286,754.35, which includes an estimate of attorneys' fees incurred to date (the "Realty Income Cure Amount").

Store No.	Debtor Counterparty	Location	Debtor Cure Amount	Realty Income Cure Amount
62538	Sears, Roebuck and Co.	Tustin, CA	\$123,842.00	\$286,754.35

8. Realty Income reserves its right to amend the cure amount to include additional fees and expenses which continue to accrue, and any other obligations that arise and/or become known to Realty Income prior to assumption or assumption and assignment of the Lease. To the extent that rent, attorneys' fees, interest, and/or other charges continue to accrue, and/or Realty Income suffers other pecuniary losses with respect to the Lease, Realty Income hereby reserves the right to amend Realty Income's Cure Amounts to reflect such additional amounts or to account for year-end adjustments, including, without limitation, adjustments for 2016, 2017, 2018, and 2019 (the "Adjustment Amounts"), which have not yet been billed or have not yet become due under the terms of the Lease.

⁵ Docket No. 2507.

9. Section 365(b)(3)(C) of the Bankruptcy Code further provides that the assumption or assumption and assignment of a shopping center lease “is subject to all the provisions thereof . . .” 11 U.S.C. § 365(b)(3)(C). As a result, in addition to the Adjustment Amounts, the assignee must also take the Lease subject to and be responsible for all of the obligations referenced and/or defined in the Lease and/or related to the Leased Premises.

RESERVATION OF RIGHTS

17. Realty Income reserves the right to amend and/or supplement this Supplemental Objection, including, without limitation, to add or supplement objections to the proposed cure amount, including any future or supplemental cure notices, and to raise any additional objections to the potential assumption or assumption and assignment of the Lease.

CONCLUSION

WHEREFORE, Realty Income requests that the Court enter an order:

(i) conditioning the assumption or assumption and assignment of the Lease on the Debtors and/or any proposed assignee promptly paying the cure amounts; (ii) requiring the Debtors or any proposed assignee to continue to comply with all obligations under the Lease, including payment of the Adjustment Amounts and satisfaction of any indemnification obligations in the regular course of business; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 15, 2019

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CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing instrument has been served via electronic mail and/or first class mail, postage pre-paid on this 15th day of April, 2019 upon the parties listed below and electronically via ECF notification upon all parties requesting service via ECF notification:

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/s/ Robert L. LeHane
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